

station, and ensure that they meet the necessary criteria.¹⁸ The Commission's ten-year experience with guidelines for public affairs and other programming demonstrates that such a system works well and is relatively unobtrusive.¹⁹

Non-"core" programming that educates and informs children will still be taken into consideration if the station provides less than the "guideline amount" of "core" programs.²⁰ If an applicant does not meet the guideline, the Commission will examine its renewal application in detail to determine whether it has met its obligation to children through its overall programming. Therefore, stations may continue to list "other" qualifying shows in their renewal application, if they actually do help serve the educational and informational needs of children.²¹

¹⁸ As noted elsewhere, we suggest that "core" programs be standard-length, regularly-scheduled, aired between 7:00 a.m. - 10:00 p.m., targeted to specific age groups, as well as both primarily and specifically designed to educate and inform children. See discussion infra Part II. Thus, any program meeting this test should qualify under the processing guideline, and all others should not. See discussion infra Part III.

¹⁹ See Delegation of Authority Order, 43 FCC 2d 638; 47 C.F.R. §0.281(8)(i)(1973).

²⁰ See CTA § 103(a)(2), 47 U.S.C.A. § 303b(a)(2). (permitting "overall programming"). In theory, the Commission could adopt two processing guidelines, one for "core" programming and one for "overall" programming. However, because no shortage of "overall" programming exists, and its educational benefit is difficult to evaluate, there is no need to establish a second guideline.

²¹ As discussed below, stations should clearly distinguish between "core" programming and "other" programming in their list of children's programming. See discussion infra Part IV.

Finally, program scheduling should affect the processing guideline. See Notice at ¶9. As discussed above, "core" programs should only be counted if they are aired at times when children are likely to be in the viewing audience. For example, an educational show that is scheduled before 7:00 a.m. or after 10:00 p.m. should not be considered in the total number of hours to determine if the station has met the processing guideline,

passing the Act, Congress explicitly declared that this was "disturbingly little," Senate Report at 7, and that it sought to "increase the amount of educational and informational broadcast television programming available to children . . ." Id. at 1.

Adopting a one or two hour a week guideline will not accomplish this result. If the Commission is to establish a processing guideline at all, it must select a level which ensures an actual increase over pre-CTA and current levels of service. CME et al. strongly urge that the processing guideline should be at least one hour per day of "core" programming, for a total of seven hours per week.

This is a reasonable and readily achievable amount. Children watch television up to 28 hours a week. Senate Report at 5. One hour per day of educational programming would represent only one-fourth of this total viewing time. Looked at another way, one hour is only four percent of a 24-hour broadcast day. One hour a day is not too much attention to pay to "this nation's most valuable resource." Senate Report at 5.

Encouraging each station to air one hour a day of educational children's programming would increase the number of options available to children. Children will be more likely to

programming. See Television Programming For Children: A Report of the Children's Television Task Force, (hereinafter "Task Force Report") Vol. 3, Brian F. Fontes, "The Amount of Children's Instructional Programming Aired During the 1973-74 and 1977-78 Television Seasons," 4-5 (1979). See also Notice of Proposed Rulemaking In the Matter of Children's Television Programming and Advertising Practices, 75 FCC 2d 138, 143 (1979) (finding that networks were airing 2.76 educational hours a week).

watch educational programs if a variety of topics are presented and if they are available throughout the week.

Moreover, the child audience is also fast becoming a valuable resource to broadcasters. "[T]he upfront [advertising] market for children's TV...is expected to grow a healthy 14% to \$800 million from \$700 million last year," according to the Wall Street Journal.²⁴ The trade press is reporting that "prices for ads in kid's programming charged by the networks and distributors

Task Force Report, Vol. 1 at 76. Similar proposals were made throughout the eighties.²⁸

Some may argue that cable television provides ample access to educational programs for children, thus reducing broadcaster's obligations in this area. However, forty percent of households still do not have access to cable.²⁹ For families with income under \$15,000, sixty percent do not have access to cable television.³⁰

One hour a day of educational programming for children is not too much to ask of the broadcast industry. Such a guideline would be a simple way to measure whether broadcasters are living up to Congressional expectations and to their public interest obligations.

C. Implementation of a Processing Guideline Is Consistent With Congressional Intent

legislative history. Under the two-prong test of Chevron U.S.A.

committees did not want to impose a quantification standard upon the FCC.

The Committee does not intend that the FCC interpret this section as requiring or mandating a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast to pass a license renewal review . . .

H.R. Rep. No. 385, 101st Cong., 1st Sess. 17 (1989) (emphasis added) (hereinafter "House Report"). See also Senate Report at 23. Thus, neither the House nor the Senate reports prohibit the

requirement.³² In sum, Congress has not precluded the Commission from instituting a processing guideline to assist administrative staff in evaluating renewal applications.

Furthermore, if Congressional intent is ambiguous, a reviewing court typically affords great deference to agency interpretations under the second prong of Chevron. Basically, the court would determine whether the agency's construction of the statute is reasonable. Here, the FCC's adoption of a processing guideline is reasonable because it is consistent with Congress' objective of ensuring that broadcasters provide programming specifically designed to meet children's educational and informational needs. Until deregulation, the FCC used processing guidelines to review the quantity of both informational programming and commercials aired on radio and television stations. Delegation of Authority Order, 43 FCC 2d at 640. Even today, the FCC uses a similar "zone of reasonableness" approach in analyzing a licensee's compliance with equal employment opportunities.³³ Therefore, adopting a processing

³² The processing guideline provides a simple -- but not the only -- way for a licensee to establish that it has provided sufficient educational and informational programming to merit renewal. Meeting the guideline, however, would not be sufficient to establish "meritorious" or "substantial" service. entitling

guideline in children's programming would be a reasonable action for the Commission to take.

Moreover, in directing the FCC to determine the "extent to which" licensees have served the needs of children, the FCC must necessarily exercise its discretion and expertise. Under Chevron, reviewing courts must defer to the FCC's reasonable policy choices and respect the agency's expertise and experience. 467 U.S. at 844-45. Here, a processing guideline is reasonable and consistent with past agency practices. Thus, adopting such a guideline does not violate congressional intent.

IV. Reporting Requirements Should be Modified to Implement the "Core" Programming Concept

If the Commission decides to focus on core programming and to utilize processing guidelines, the Commission should also modify the current reporting requirements.³⁴ Modifying reporting requirements as suggested below would facilitate review of renewal applications by Commission staff and members of the public. It would also assist broadcasters in understanding and meeting their obligations under the CTA more fully.

At renewal time, a licensee is currently required to submit only a summary of its programming and other efforts to serve the

Media, Inc. v. FCC, 595 F.2d 621 (1978) (upholding the "zone of reasonableness" test).

³⁴ Even if the Commission declines to adopt "core" programming and processing guidelines, it should still clarify the reporting requirements. As discussed above, many stations do not provide the minimum information required by the Commission or reported it in widely varying formats. See infra at pp. 4-5 and note 5.

educational and informational needs of children. 47 C.F.R. §73.3526(8)(iii) (1992). At a minimum, the summary must include the date, time, duration, and brief description of each children's educational program listed. Id.

In preparing its report, CME found that station submissions varied widely.³⁵ In the future, we can expect that this problem to get even worse, since the lists in CME's sample covered less than one year, and future renewal applications will cover up to five years. Unless the Commission clarifies and standardizes the information to be reported, it will become very burdensome for the Commission and the public to review these applications.

In addition, the program descriptions offered by licensees are often very vague, giving little indication of whether the program is actually educational.³⁶ Stations may list a weekly series of general audience programs, of which only one segment or one episode was geared toward children, as "specifically designed" for children. See Report at 4 and Appendix. It is clear that broadcasters are confused about how to comply with the current reporting requirements.

³⁵ Report at 4. See also discussion *infra* p.4 and note 5. One station listed and described each episode of a single series (22 pages), while other stations' submissions ranged from one to over fifty pages long. Id.; see also Appendix to the Report.

³⁶ For example, KOKI-TV in Tulsa, Oklahoma, described "Muppet Babies" as an "animated children's series for ages 2-11, designed to teach lessons through the experiences of the Muppet Babies and their life in a nursery". It is difficult to tell from this description whether this show has any true educational content.

We urge that the Commission adopt the following three proposals to reduce broadcaster confusion and to facilitate application of the "core" definition. First, stations should be required to identify clearly any programs (whether by series or by episode) they believe meet the definition of "core" programming. Other programs which may not meet the definition of "core" programming, but nonetheless contribute to the educational needs of children, should be separately identified. Requiring stations to indicate which programs fulfill the "core" requirements is a reasonable request and would not be overly burdensome on broadcasters.

Second, the Commission should clarify the information that must be included in program descriptions. In addition to the minimum information already required, stations should be required to indicate the educational objective of a particular program, e.g., to teach a subject such as: history or science, to enact a piece of literature, or develop a skill such as mathematics or vocabulary. In addition, stations should indicate the specific age group the program is designed to serve.³⁷ At license renewal time, this information would assist the Commission in determining whether the program listed as a "core" program actually meets the "core" requirements.

Finally, the Commission should require stations to report the actual number of hours devoted to "core" programming each day or week, and to provide weekly and/or quarterly averages for easy

³⁷ See infra Part V.

comparison.³⁸ Ready access to these numbers would greatly simplify the task of the Commission staff, and assist the public in monitoring compliance. It will also alert licensees to the fact that the amount of educational and informational programming presented on the air is what determines renewal, not the thickness of the renewal application package.

Clarifying the reporting requirements in these ways will facilitate review of license renewal applications and serve to assist stations in meeting the mandate of the CTA.

V. "Core" Programming Should Be Targeted and Licensees Should Identify Target Groups in Program Descriptions

Because the cognitive abilities, needs and interests of a six-year-old differ so much from those of a sixteen-year-old, programming designed explicitly to educate and inform children will in most cases be targeted to a specific age group. It is extremely difficult to design a program that would be educational for all age groups. For this reason, we urge the FCC to clarify that "core" programming means programming specifically designed to educate or inform children within an appropriately limited age range.

We are also concerned that children of all ages have at least some age-appropriate "core" programming available to them,

³⁸ Of course, if an entire series is listed, the licensee will be free to count the hours appropriately in any weekly total, as long as it subtracts days when the show was preempted. The Commission could also establish a de minimis exception for exceptional circumstances, day-long specials, etc., as long as the station explained the nature of the event.

presented at times appropriate to their age group. While we do not recommend requiring a separate guideline for each age group at this time, we do propose that stations be required to identify the specific age group a program is designed for in their renewal applications.³⁹ This would enable the Commission to see whether all age groups are receiving adequate service. After one year, the Commission should revisit this issue. If it determines that one or more age groups is underserved, it should take further action.

A. "Core" Programming Should Be Targeted

At a minimum, "specifically designed" "core" programming should be targeted to serve specific needs of specific age groups. Such a proposal is consistent with the language and intent of the Act, which requires that each television licensee provide programming "specifically designed" to serve the educational and informational needs of children. CTA §103 (a)(2), 47 U.S.C.A § 303b(a)(2). The phrase "specifically designed" inherently implies that the program must be targeted to meet specific needs, which obviously vary with the age of the child.

³⁹ As the Commission has recognized since at least 1974, children can be grouped into three distinct age groups with unique needs: pre-schoolers (2-5), elementary school-aged children (6-12) and teenagers (13-16). See 1974 Policy Statement at 7; ACT v. FCC, 756 F.2d 899, 901 (D.C.Cir. 1985) (listing pre-school children, primary school aged children, and elementary school aged children). See also Donna Lampert, The New Children's Television Law: Promises and Problems at 4, Benton Foundation Report (1990).

Legislative history supports this view. The Senate Report construed this section to require licensees to "provide[] programming specifically designed to serve the educational and informational needs of pre-school and school-aged children. Senate Report at 22 (emphasis added). As the Report explains:

it is important to require broadcasters to provide programming specifically designed for pre-school and school-aged children because of the overwhelming evidence that such programming has the most impact on children's development. Both the record in the FCC's children's proceedings and the record in the Senate are replete with evidence that programming aimed at children of specific ages is far more effective at teaching or informing children.

Id. at 23 (emphasis added).⁴⁰

As this passage indicates, the Commission itself has also recognized the importance of targeting. In the 1974 Policy Statement, it urged licensees to target specific age groups:

[S]ome effort should be made for both pre-school and school aged children. Age-specificity is particularly important in the area of informational programming because pre-school children generally cannot read and otherwise differ markedly from older children in their level of intellectual development.

1974 Policy Statement at 7. In 1979, the Children's Television Task Force also found a need for age-specific programming.

⁴⁰ As Senator Wirth testified during the CTA hearings, "Extensive research tells us children learn most effectively from material that is specially tailored to their limited level of cognitive development." Children's TV Act of 1989: Hearings before the Senate Subcommittee on Communication of the Senate Committee on Commerce, Science, and Transportation, 101st Cong., 1st Sess. 21 (July 12, 1989). See also Senate Report at 6 (educational programming is most effective when it is designed to focus on particular age groups; citing examples of targeted programs and studies documenting effectiveness).

Since children's abilities to interpret and understand television content changes particularly between pre-school and the older, elementary grades, programming which takes into consideration children's abilities to interpret the messages is needed. Major demarcation points would appear to be between preschool and elementary school aged children, and secondly, young vs. older elementary school children.⁴¹

By 1979, the Commission was so concerned about this issue that it proposed to require broadcasters to air 5 hours per week of educational programming for preschool children and 2 1/2 hours per week for children aged six to twelve. See 1979 NPRM at 143, 148; Task Force Report at 76. However, the Commission failed to act on this proposal.

As indicated in the Senate Report and Senator Wirth's testimony, Congress was fully aware of these findings, and it is clear that it intended all along that "specifically designed" programming be designed for specific age groups. Requiring broadcasters who air "core" programming to indicate its target audience would be an effective, if belated, means of implementing this intent.

B. The Commission Should Ensure that Educational Programming Serves Children in Each Age Group

In developing regulations to implement the CTA, the Commission recognized that the CTA permitted the Commission to require targeting, but nonetheless declined to require broadcasters to provide programming "to all ages or to each

⁴¹ Ellen Wartella, "Children and Television: The Development of the Child's Understanding of the Medium" 51, Supplemental Research Paper, Task Force Report, vol. 5.

subset of children within the under 16 age range."⁴² Instead, it decided to afford broadcasters "maximum flexibility in determining the 'mix' of programming they will present to meet children's special needs." April Order, 6 F.C.C.R. at 2114. This approach assumed that each station would "select the age groups they can most effectively serve." Id.

Unfortunately, the result of affording such flexibility to broadcasters has been that the special needs of different age groups are generally not being met. CME's review indicated that stations were airing little programming specifically designed to educate pre-schoolers and elementary-aged children. Instead, the handful of new shows created in response to the CTA appeared to be targeted to older children and teens. See Report at 5.⁴³ Therefore, Commission action in this area is needed.

The economics of children's television favor programs aimed at teens. Broadcasters prefer the teen market because teens have greater spending power, the shows may attract general audiences as well as younger children, and programs directed to children over age 12 are not subject to advertising limits. The NBC network recently decided to drop all its Saturday morning

⁴² April Order, 6 FCC Rcd at 2114.

⁴³ The Report listed "Scratch", "Way Cool" and "Not Just News". One station described "Scratch" as "targeted to teens age 12-17." Report at 5.

children's programming except those programs targeted to teens.⁴⁴

Because of this "market failure," the Commission should make sure that children of all ages are able to access age-appropriate programming. As the Senate Report noted:

Children, particularly young children, have much more difficulty following general audience programming. While they may find it interesting to watch, they do not learn much from it.

Senate Report at 23. Similarly, the Children's Television Task Force found that:

Preschool children (ages two to five) in particular may derive large benefits from television because they are at an age to benefit from educational experiences but have relatively few opportunities for either formal learning or for other cultural experiences. They do not go to school and do not read, in general, and thus have fewer alternative sources of information. . . .

Task Force Report, vol. 1 at 20. In addition, as we know from the long and successful run of "Sesame Street," television can help prepare younger children for school.⁴⁵

Because stations are not currently required to include target age groups in their program descriptions, it is difficult to fully assess the extent to which pre-school and school-aged children are presently underserved. Thus, we recommend that all licensees include this information in their "core" program descriptions. After the reporting requirement has been in effect

⁴⁴ See Christopher Stern, Teenagers the Target of TNBC, Broadcasting & Cable, May 3, 1993 at 56.

⁴⁵ See, e.g., Ernest L. Boyer, Ready to Learn 140 (1991); H.R. 5357, the Ready to Learn Bill introduced by Rep. Wyden in the current Congress.

for a year, the Commission should review renewal applications to make sure that each of the three target groups (ages 2-5, 6-12, and 13-16) are able to watch sufficient amounts of programming directed to its particular needs.⁴⁶ If the Commission then determines that one or more age groups are underserved, it should consider whether to adopt separate processing guidelines or some other method to ensure that children of all ages have access to suitable educational programming.

VI. Increasing Public Awareness Would Further Encourage Broadcaster Compliance With the Act

Adopting the core programming proposal and utilizing processing guidelines will greatly simplify the Commission's task of reviewing license renewal applications. Even so, given the Commission's limited resources, it makes sense to enlist the assistance of members of the public in assuring compliance with the CTA.

Members of the public have traditionally played an important role by bringing to the FCC's attention deficiencies in broadcaster performance through complaints, petitions to deny and informal objections. However, members of the public cannot be relied upon to fulfill this role if they are not aware of what the law requires broadcasters to do. The FCC should take two simple steps to better inform the public.

⁴⁶ At that time, the Commission should also assess whether the programs are aired at inappropriate hours of the day; e.g. teen-oriented shows being presented at 7 a.m. on Saturday.

First, the FCC should update The Public and Broadcasting -- A Procedure Manual, 39 Fed. Reg. 32288 (1974) ("Manual"). The Manual outlines procedures available to citizens so they can participate effectively in Commission proceedings. It includes information about how to file informal objections and petitions to deny. Id. at 32291. Commission rules require that broadcasters keep a copy of the Manual in their public files. 47 C.F.R. § 73.3526 (a)(6) (1992).

Because it was written in 1974 and so much has changed over the last twenty years, the Manual is desperately in need of updating. Information about television licensees' obligations under the CTA should be added to assist the viewing public in monitoring and evaluating licensees' efforts. The Manual should also inform members of the public about what they can do if they believe a television station is not meeting its obligations.

In addition, the Commission should amend the announcement it requires a television station to make to advise the public that its license is coming up for renewal. See 47 C.F.R. §73.3580 (d)(4)(i) and (ii) (1992). The announcement should inform the public of the station's obligations under the CTA and advise the public how they can bring perceived deficiencies to the Commission's attention.

Adopting these two simple steps would have many benefits. Members of the public would be more likely to engage in dialogue with local broadcasters, thus, resulting in programming that better serves the needs of children in those communities.

Second, because broadcasters would know that non-compliance could result in a license challenge, they would have a stronger incentive to comply with the law. Finally, members of the public could assist the Commission in ensuring that each station meets the requirements for license renewal.

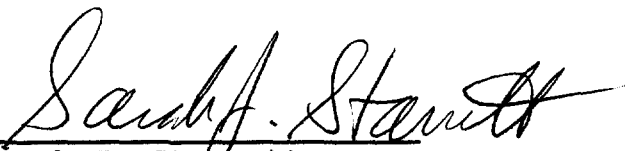
CONCLUSION

For the reasons given above, we urge the Commission to immediately implement its "core" definition and a processing guideline of an hour a day (totaling seven hours per week) for evaluating licensee compliance with the Children's Television Act, and to take the additional steps outlined above. These changes will make the broadcast television industry more responsive to Congress and to its child audience.

Respectfully submitted,

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APPENDIX

**A REPORT ON STATION COMPLIANCE WITH THE
CHILDREN'S TELEVISION ACT**

Prepared by

**Center for Media Education
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September 29, 1992

In 1990, after years of studies and testimony from child development experts, educators, and broadcast industry representatives, Congress enacted the Children's Television Act. Noting that television plays an influential role in the lives of children, and that "on average, a child spends more time watching television than he or she spends in school," lawmakers concluded that TV broadcasters -- particularly commercial television -- needed to do better in "providing unique and positive educational opportunities for children."¹

"Our children are this nation's most valuable resource, and we need to pay special attention to their needs," declared one Congressional report. "Study after study has demonstrated that students in the United States are lagging badly behind those of the rest of the world. Today, we are finding that far too many of our children cannot read, add and subtract, or understand the meaning of important events."²

The Children's Television Act was intended by Congress to "increase the amount of educational and informational broadcast television programming available to children."³ To achieve this end, the Act requires broadcasters -- as a condition of license renewal -- to serve the educational and informational needs of children through their overall programming, "including programming specifically designed to meet those needs."⁴ Under the provisions of the new law, all commercial television stations must submit a list of their children's programming efforts to the Federal Communications Commission every five years when their licenses come up for renewal.

¹H.R. Rep. No. 385, 101st Cong., 1st Sess. 5 (1989)

²S. Rep. No. 227, 101st Cong., 1st Sess. 5 (1989).

³S. Rep. No. 227, 101st Cong., 1st Sess. 1 (1989).

⁴ Children's Television Act of 1990, Pub. L. No. 101-437, 101st Cong., 1st. Sess. (codified at 47 U.S.C. § 303b(a)(2)).

October 1, 1992 marks the end of the first year since this new law took effect. The Center for Media Education, in collaboration with Georgetown

length children's programs in order to fulfill this requirement." *Emphasis added.*)⁸

We also examined how broadcasters were reporting their compliance efforts and whether or not they were complying with the minimum reporting requirements of the FCC. Our purpose was not to evaluate program content, but rather to identify patterns in the overall response to this new law and to assess the degree to which the law is having the effect intended by Congress.

MAJOR FINDINGS:

1. Our examination reveals that overall, television broadcasters are not making a serious effort to adequately serve the educational and informational needs of children.

We have found a pattern of disturbing industry practices which raise serious questions about the broadcasting industry's commitment to fulfill the mandate of the Children's Television Act. Though some new programs have been created in direct response to the new law, a significant number of stations are scheduling them at times when they are virtually inaccessible to the audiences they were designed to reach. It is also evident that reporting requirements established by the Federal Communications Commission to determine station compliance are grossly inadequate.

2. Many stations are not providing the minimum information required by the Commission.

Over a quarter of the stations in our sample failed to provide the required information as to date, time, and duration of the programs cited as educational and informational.⁹

⁸Policies and Rules Concerning Children's Television Programming, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, 6 FCC Rcd 5093, 5101 (August 26, 1991). ("August Order").

⁹Policies and Rules Concerning Children's Television Programming, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements